IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2271 of 1999

to

FIRST APPEALNo 2273 of 1999

with

FIRST APPEAL Nos. 2275 to 2280, 2282 to 2293, 2295 to 2296, 2298, 2300 to 2307, 2311 to 2320, 2322, 2324 to 2347, 2349 to 2350, 2352 to 2353 and 2355 of 1999.

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

MANILAL DHURABHAI PATEL

Appearance:
In FIRST APPEAL Nos. 2271 to 2373, 2275 to 2280, 2282 to 2293, 2295 to 2296, 2298, 2300 to 2307, 2311 to 2320 of 1999.

Mr.A.D.Oza, GP, for the appellants.

In First Appeal Nos. 2322, 2324 to
2347, 2349 to 2350, 2352 to 2353 and 2355 of 1999.

Mr.Mukesh Patel, AGP, for the appellants.

In FA Nos.2271 to 2273, 2275 to 2278, 2280, 2285, 2286, 2292, 2293, 2300 to 2305, 2307, 2324 to 2326, 2328 to 2331, 2334, 2336, 2337, 2340, 2341, 2342, 2344, 2345, 2347 and 2349 of 1999.

Mr.JV Japee for the respondents.
Respondents served in rest of the Frist Appeals.

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 04/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

In this group of 72 first appeals, under section 54 of the Land Acquisition Act, 1894 (Act), the appellant, State of Gujarat, has questioned the legality and validity of the common judgment and awards dated 30th December, 1999 in Land Reference Case Nos.625 to 709 of 1989, recorded by the Assistant Judge, Sabarkantha, at Himatnagar.

A few material skeleton projection of facts, may be highlighted, at this juncture, with a view to appreciate the merits of this group of appeals and challenge against it. The respondents are original-claimants whose lands came to be acquired for the purpose of Gohai Jalagar Yojana situated in village Chhapra, Tal: Himatnagar, Dist: Sabarkanth, pursuant to notification under section 4(1) of the Act published on 21.9.83 and followed by notification under section 6(1) published on 22.5.86. The objections raised by the owners of the land were heard and the Land Acquisition Officer declared his award on 31.3.87 and directed to pay compensation to the concerned person for the acquisition of their lands and houses at the rate of Rs.2 per sq. mtr. for land and different amounts in respect of superstructure.

The original-claimants being dissatisfied with the amount awarded by the Land Acquisition Officer, sought reference and at the their instance, references came to be made under section 18 of the Act to the District Court. All

the references were consolidated and heard and decided by a common judgment by the reference Court. The references came to be, partly, allowed with proportionate costs and additional compensation of Rs.3 per sq. mtr. came to be awarded to the claimants. Thus, in all, the original claimants, respondents herein came to be granted an amount of Rs.5 per sq. mtr. in respect of their land acquired for the aforesaid purpose by the appellant. It is in this context, the appellant has invoked the powers of section 54 of the Act and has preferred this group appeals against the common judgment and award of the reference Court. The reference Court placed reliance on the oral evidence of the claimants and the documentary evidence produced in support of their claims. The reference Court has assigned reasons for increasing an amount of Rs.3 per sq. mtr. over and above the amount of Rs.2 granted by the Land Acquisition Officer for the fixity of the market price in para 11 of the impugned judgment.

The reference Court placed reliance on the comparable award produced, at Ex.149. It is a judgment and award of the same Court passed in Land Reference Case No.1031/88. It pertains to lands situated in village Bhadardi. Ex.149, comparable award of the same District Court has become final, wherein, an amount of Rs.10 per sq. mtr. has been awarded and also 23 per cent addition in respect of the constructed portion. The lands covered under Ex.149 are situated in village Bhadardi. The distance between village Chhapra and Bhadardi is about 3 k.m. There is clear and consistent evidence to show that the lands, houses and and prices of both the villages gamtel lands are similar. It would be interesting to refer here to the date of notification under section 4(1) of the Act. In respect of the lands under reference in this group of appeals notification under section 4(1) of the Act was issued on 21.9.83, whereas, the date of such notification in respect of the lands covered under Ex.149 is dated 31.1.85. It, therefore, becomes clear that the difference in the issuance of notification under section 4(1) of the Act in so far as present group of appeals and the award at Ex.149 concerned, is hardly, 15 months.

It is a settled proposition of law that a comparable award would furnish a good guide for determination of market price for the purpose of compensation contemplated under section 23 of the Act. In our opinion, therefore, reference Court has, rightly, relied on comparable award produced at Ex.149 and has, rightly, reached to the conclusion that the claimants are entitled to additional amount of Rs.3 per sq. mtr. over and above the amount

of Rs.2 per sq. mtr. awarded by the Land Acquisition Officer. There is no, serious, dispute about the fact with regard to proximity of the said villages, nature, utility, and the type of lands. It is, in this context, reference Court which had determined the market price finally fixed for the acquisition of land covered under the award Ex.149, in relation to notification dated 31.3.85 at the rate of Rs.10 per sq. mtr., is reduced while awarding market price in respect of the lands covered under the reference in this group of appeals. After considering the submissions, the evidence and the decisions reported in AIR 1988 SC 943 and 1992(1) G.L.R. 514, reference Court has specifically found and has observed that just and fair amount of market price in the present group of reference would be in all Rs.5 per sq. mtr. by way of compensation and interest of justice will be subserved if 11 per cent addition in compensation of amount is awarded in so far as the construction portion is concerned. In our opinion, the approach of the reference Court could not be characterised, in any way, perverse, unjust, unreasonable or in any way vulnerable requiring our interference in exercise of power under section 54 of the Act. We may observe that despite the fact that the amount awarded to the claimants in most of the claims are petty and insignificant, we have dwelt on various points. However, it would not be necessary to meticulously and minutely examine further other aspects.

Before parting, we may place it on record that, initially, a plea with regard to delay in making the application for reference under section 18 was, vehemently, raised. After considering the facts and circumstances, the same was not pressed for the reason that there was no service of notice under section 12(2) of the Act on the claimants. For this purpose, we had called for the original record and verified and the learned AGP, also, fairly conceded that the record does not support the earlier plea that the applications under section 18 for making reference to the District Court was not preferred by the claimants within the period of limitation. In this context, it must be, seriously, noted that there is no dispute pressed about the delay in making the application under section 18 by the claimants. Notwithstanding that and surprisingly, the discussion made by the reference Court in para 10 of the impugned judgment, prima facie, would go to show that there was a delay in making the applications for reference under section 18 of the Act, on the part of the claimants. It appears that the attention of the reference Court was not, properly, drawn that there was no delay as notice under section 12(2) of the Act had not been served upon

the claimants and, therefore, obviously, the claimants were obliged to make applications under section 18 of the Act for reference to the District Court, after the award of the Land Acquisition Officer within a period of six months and the reference applications, as such, had been made within the period of six months from the date of award of the Land Acquisition Officer, in absence of notice under section 12(2) of the Act. Therefore, proviso to section 18 appears to have not been fully and sufficiently placed in focus before the reference Court, at the relevant time. It is in this context, the original claimants, by way of precaution, submitted applications for condonation of delay along with application for reference under section 18, to the Collector for making reference to the District Court and all the applications were sent to the District Court by the Collector along with the applications for condonation of delay, came to be decided in favour of the claimants by the District Court without appreciating the correct factual scenario and proper profile of legal proposition enshrined in section 18 of the Act. Though there is no delay, applications for condonation of delay came to be made by all the claimants and because the same were made, they came to be decided by the reference Court being oblivious to the factual position that there was no delay, as such and, also, being oblivious to the legal proposition that in case of delay, it was not proper and legal for passing any order for condonation of delay in the event of any application under section 18 of the Act having been made beyond the period of limitation. Even if such a delay is condoned and award is passed by the reference court, unmindful of the relevant legal proposition and setting, it would be invalid award as it has been very well expounded and enunciated and propounded by catena of judicial pronouncements that delay application along with application made by the claimants for reference to the Collector for being referred to the District Court is not legal and valid as the office of the Collector is not a Court and even if such an application is made and it is forwarded by the Collector to the District Court for adjudication and decision, and delay is condoned, it is illegal and even if the award is passed, it would tantamount to an invalid order or award. This proposition is amply and evidently clear. However, despite the fact that delay applications were made and they came to be referred to the District Court along with the applications under section 18 of the Act and after such applications having been dealt with and adjudicated upon in favour of the claimants, they would not have any adverse impact or ramification on the awards passed by the reference Court, for the simple

reason that in the factual scenario projected before us and placed in focus from the record, the applications for reference under section 18 made by the claimants, though along with applications for condonation of delay, were within the period of limitation as provided in proviso to section 18 of the Act. Obviously, this clarification is placed on record so as to explain the observations made in para 10 of the impugned common judgment.

In fact, no clarification is necessary as regards the interest awarded by the reference court, as it is very clear from the plain perusal of the final order and the observations made by the reference Court, since it is repeatedly requested on behalf of the Assistant Government Pleader, it is hereby, clarified that there shall no be interest on solatium and 12 per cent increase as provided in section 23(1(a) of the Act.

The additional amount due and payable under the impugned common judgment is not yet paid as stated by the learned advocate appearing for the claimants. The appellant, State of Gujarat, is therefore, directed to deposit the full amount minus the amount already deposited with costs and interest within a period of eight weeks from the date of receipt of certified copy of the judgment.

In the result, all the appeals are dismissed with no order as to costs.

(J.N.Bhatt, J.)

(Akshay H. Mehta, J.)

(vjn)